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No. 80-1436

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MALCOLM BALDRIGE, Secretary of Commerce, *et al.*,
Petitioners,

v.

PETER SHAPIRO, Essex County Executive,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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BRIEF FOR AMICUS CURIAE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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BRIEF FOR AMICUS CURIAE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of Amicus Curiae

The Mexican American Legal Defense and Educational Fund (MALDEF) is a non-profit corporation established to protect and extend the civil rights of Mexican Americans and other Hispanics in the United States. A major

goal of the organization since its inception has been to enforce the constitutional guarantee of equal representation for equal numbers of people. A basic mechanism for achieving this goal is to ensure that the Census Bureau has accurately assessed the number of Hispanics within the population.

MALDEF has challenged the accuracy of census counts in various parts of the country, alleging that racial minority and low-income populations, including Mexican Americans, were disproportionately undercounted in the 1980 census, thereby adversely affecting their political representation and access to certain grant programs.[1] In many instances, including the cases referred to in footnote 1, discovery of address lists is an essential tool enabling private persons and groups and local governments to challenge the Bureau's population figures. Because of the fundamental constitutional and statutory rights involved,

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[1] Spanish Coalition, et al., v. Baldrige, C.A. No. 80C2004 (N.D. Ill.); Young v. Klutznick, 652 F.2d 617 (6th Cir. 1981) (brief amicus curiae filed Jan. 10, 1981); Carey v. Klutznick, __F.2d__ (2nd Cir. No. 81-6042, June 12, 1981) (brief amicus curiae filed Feb. 12, 1981).

MALDEF urges that the Court uphold the district court's disclosure orders in this case and in McNichols v. Baldrige, No. 80-1781.

MALDEF has also worked through its Census Awareness Project to promote the enumeration of all Hispanics in the United States on Census Day, including undocumented aliens. The importance of upholding strict confidentiality requirements for information furnished by individual respondents critically affects the accuracy of the census count of Hispanics, particularly in those communities where undocumented aliens reside. The Census Bureau is under the statutory obligation to assure respondents that their identities will not be disclosed and that the information they furnish will not be used against them. 13 U.S.C. §8(c). Undocumented aliens, who frequently avoid contact with government representatives, will be even less likely to cooperate with the census unless the prohibitions of 13 U.S.C. §9 against disclosure of individual identifying data are strictly enforced. Therefore, MALDEF also urges the Court to acknowledge the importance of maintaining confidentiality of

census information about individuals.

The Bureau should be permitted to disclose address lists and vacant unit lists, but only when the parties seeking disclosure are involved in formal efforts to challenge statistical population data published by the Bureau and only under strictly tailored protective orders which effectively prevent both disclosure of individual identifying material and unauthorized use or publication of any material. The use of adequate protective orders will uphold the confidentiality provisions of §9 as well as allow meaningful opportunity for the general population to assure an accurate census count. Disclosure of address lists and vacant unit lists under these conditions would serve the two interests of Hispanics identified in this Statement, and is fully consistent with the Census statutes.

ARGUMENT

The Census Confidentiality Statutes Can and Should Be Construed to Preserve the Important Concerns of Accuracy in Enumeration and Confidentiality of Respondent Information. A Correct Analysis of the Statutes Permits Disclosure of Address Lists in This Case.

The legal issue presented in this case is closely related to that before the Court in McNichols v. Baldrige, O.T. 1980 No. 80-1781, cert. granted (June 15, 1981). Although the case at bar originated as a request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and while McNichols is an action to compel re-examination of the Census Bureau's determination of vacancy rates in Denver, amicus believes that the same legal principles control both cases. In each, the issue turns on the interpretation to be given to the census confidentiality statute, 13 U.S.C. §9(a).

Amicus has stated its position in a brief submitted to this Court in McNichols, supra, and we will not repeat our entire argument here. In that brief, we acknowledge the great importance both of the confidentiality of individual census respondent information and of limited access to census data for purposes of verifying and correcting

undercounts like those alleged to have occurred in Essex County.[2] We submit that both of these interests can be safeguarded by a reading of 13 U.S.C. §9(a) which allows undercount litigants, or others who challenge the accuracy of census data in formal proceedings, limited access to census information including statistical summaries and lists but excluding material which identifies census respondents or provides individual information about them.[3] Any such access should be circumscribed to eliminate individual respondent information and should assure that there will be no unauthorized dissemination of any information.[4]

In our view, the correct reading of 13 U.S.C. §9 is that of Judge Stewart in his opinion concurring in the Second Circuit's judgment in Carey v. Klutznick, __F.2d__(2nd Cir. No. 81-6042, June 12, 1981). His balanced interpretation of the

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[2]Brief of MALDEF as amicus curiae in McNichols v. Baldrige, No. 80-1781, submitted August 4, 1981, at 4-9.

[3]Id. at 9-13.

[4]Id. at 15-16.

statutory provisions is faithful to the Congressional intent and serves the important and somewhat competing interests of confidentiality and accurate enumeration.[5]

As applied to this case, Judge Stewart's correct analysis of the statutory materials requires affirmance. The District Court was at pains to assure that no individual identifying material would be disclosed. Pet. for Certiorari, App. 10a, 14a-15a; and required that an oath of nondisclosure be administered to any person granted access to statistical information under its judgment. Id. at 17a. The Third Circuit properly affirmed that judgment. Its ruling should in turn be affirmed.

Conclusion

For the reasons stated in MALDEF's amicus curiae brief filed in McNichols v. Baldrige, supra, the judgment should be affirmed.

DATED: September 2, 1981

Respectfully submitted,

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[5] Id. at 10-13.